

DDI-714-74

6 March 1974

MEMORANDUM FOR THE RECORD

SUBJECT: Reporting of International Agreements to the Department
of State Under the Case Act

1. As a result of suggestions made to the Department of State by this Agency and others in connection with their implementation of the Case Act, State modified its proposed letter requests to the agencies which originally would have required a submission to the Department of all international agreements between an officer of the U. S. Government and an officer of another government, other than purely commercial matters or routine banking arrangements.
2. We thought State had also agreed to drop from the letter the requirement that every agreement be sent to State for their determination of whether it is an international agreement. While the final Secretary's letter did drop the proposed language that the Secretary would resolve whether an agreement is an international agreement, it is still clearly the opinion of the Department that texts should be submitted for the Department's review. However, from my conversation with the Assistant Legal Adviser for Treaty Affairs, Charles I. Bevans, on 27 February 1974, it is also clear that he will not push this point and that he is merely encouraging other agencies to consult with him in determining which agreements are covered by the Case Act.
3. Mr. Bevans said the Department is most concerned with agreements which are signed by another agency in the name of the U.S. Government and, therefore, appear to bind the Government, and with agreements committing the expenditure of funds not yet appropriated by being written for several years subject to the availability of funds. The Department takes the

position that, except for the Postal Service which has special statutory authority, only the President and the Secretary of State may enter into agreements at the diplomatic level. There is apparently some difference with the Department of Defense on this point, but the State Department feels that the Defense Department is limited to making contractual arrangements such as those for the use of airfields or property and cannot make binding agreements establishing rights in a foreign country.

4. Mr. Bevans has received answers to the Acting Secretary's letter from most agencies and has forwarded to the Congress those agreements which he considers to be international agreements. Apparently, a number of interagency agreements (i. e., agreements between a U.S. agency and an agency of a foreign government) have been forwarded to him. He considers most of these to be "trivia" in the sense of the Case Act. I told him we felt that none of our agreements were international agreements in the sense of the law and that, therefore, we would be sending a negative response to the Secretary and not forwarding any texts. Mr. Bevans accepted this without suggesting we should forward anything; but he said that if we had any doubts about any arrangements we had and would forward the texts, he would be pleased to review them and would hold them in complete confidence.

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Deputy General Counsel

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OGC:JDM:sin

Original - OGC

1 - DDO

1 - DDI ✓

1 - DDM&S

1 - DDS&T